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May 13, 2005

MEMORANDUM TO: CLERKS, UNITED STATES BANKRUPTCY COURTS

SUBJECT: **URGENT** - Clarification of Effective Date of Statutory Fee Increases and Reallocation of Fees for Bankruptcy Cases to October 17, 2005

During the past two weeks, the Bankruptcy Court Administration Division has held conference calls with the bankruptcy clerks. One of the areas discussed on these calls is the increase in statutory filing fees for bankruptcy cases, and the distribution of those fees. I am writing to let you know that the changes to the fee amounts and the method for their apportionment will be effective October 17, 2005.

As you are aware, under the Section 325 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub L. 109-8, 2005) the filing fee amounts required by 28 U.S.C. § 1930 would change as follows, effective October 17, 2005:

- Chapter 7 - increase from \$155 to \$200¹
- Chapter 13 - decrease from \$155 to \$150, and
- Chapter 11 - increase from \$800 to \$1,000.

This section also changed how the fees are apportioned between the General Fund of the Treasury, the U.S. Trustee program and the judiciary and would restrict the use of a portion of the funds distributed to the judiciary. Those changes in how fees were to be apportioned were effective immediately. On April 18, 2005, George Schafer sent a memorandum to all bankruptcy clerks indicating that there were drafting errors in this section and, therefore, recommending that courts defer implementation of these fee provisions until these issues are resolved.

Because of the drafting error in the allocation of filing fees, as well as other issues, the judiciary, working with the Department of Justice, sought legislative action to amend this section of the Act. This amendment also includes an additional increase in the filing fee for Chapter 7 to

¹ The statutory fee does not include the other fees collected at filing, including the \$15 trustee fee (for Chapter 7 filings) or the \$39 administrative fee (collected in all cases).

\$220² that **was** proposed by the U.S. Trustees. This correction has been included in H.R. 1268, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, which was signed into law by the President on May 11, 2005 (Pub. L. 109-13, 2005).

In reviewing the language authored by the House Judiciary Committee that was included in the Supplemental Appropriation Act, there was some uncertainty about its effective date. Subsection (b) of the amendment, states that the provision “shall take effect immediately after the enactment of the Bankruptcy Abuse and Consumer Protection Act of 2005.” A literal reading of this language could be that the fee provisions are intended to be effective on the date of enactment of the Bankruptcy Abuse and Consumer Protection Act of 2005 (April 20, 2005), which would mean that the fee increases would be retroactive back to that date and that, for cases filed between April 20 and the date that the President signs the supplemental bill, additional fees would be owed in cases filed under Chapter 7 and 11, and credits would be due in Chapter 13 cases. It is this interpretation which we have been discussing on our circuit conference calls over the past two weeks.

We have just learned, however, that the fee increases included in the Supplemental Appropriations Act will **not** be retroactive. We have been informed by staff of the House Judiciary Committee, working with the House Legislative Counsel, that the amendment to section 325 will replace the original section 325 in the Bankruptcy Reform Act, and, as amended, section 325 would be subject to the Act’s overall effective date of October 17, 2005. Our General Counsel concurs with this opinion. Thus, effective October 17, 2005, the filing fee amounts required by 28 U.S.C. § 1930 will change as follows:

- Chapter 7 - increase from \$155 to \$200 (Bankruptcy Reform) to **\$220** (Supplemental)
- Chapter 13 - decrease from \$155 to \$150 (Bankruptcy Reform & Supplemental), and
- Chapter 11 - increase from \$800 to \$1,000 (Bankruptcy Reform & Supplemental).

In addition, the supplemental provision will amend the allocation of fees that was contained in the enacted Bankruptcy Reform Bill. Further information on these new allocations, which will also be effective on October 17, 2005, will be forthcoming.

² Increasing the \$200 figure that was included in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub L. 109-8, 2005).

Please feel free to call me or Mary Louise Mitterhoff or Mary Fritsche at (202) 502-1540 if you have any questions.

A handwritten signature in cursive script, appearing to read "Glen", with a light gray circular stamp or watermark behind it.

Glen K. Palman

cc: Judges, United States Bankruptcy Courts
Bankruptcy Administrators